

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to	)	WC Docket No. 18-155
Eliminate Access Arbitrage	)	
	)	

**REPLY COMMENTS OF SOUTH DAKOTA NETWORK, LLC**

South Dakota Network, LLC (“SDN”) hereby replies to the comments filed in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned matter.<sup>1</sup>

The comments show that the Commission can end one form of access arbitrage by simply prohibiting any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider. However, the comments also show that as long as certain entities can profit off of the communications network by stimulating traffic, access arbitrage will continue to plague the industry and divert time and money away from carriers who build broadband networks.

Accordingly, the Commission should find that access stimulation is an unjust and unreasonable practice and, as such, is prohibited. The Commission should reject requests to impose new regulations on carriers that do not engage in access stimulation or access arbitrage in this proceeding.

**I. LECS Engaged in Access Stimulation Should be Prohibited from Utilizing a CEA Tandem**

A number of commenters complain that access stimulators are able to hide behind the section 214 authority granted to CEA providers to engage in access arbitrage. SDN also has brought this issue to the Commission for a number of years and urged the Commission to end the

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<sup>1</sup> *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking (June 5, 2018) (“NPRM”).

ability of entities to misuse centralized equal access in this manner. A simple and direct way to address this issue is to prohibit any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider.

This solution is in line with the Commission's action in the *Transformation Order* prohibiting a rate-of-return LEC engaged in access stimulation from participating in the NECA traffic-sensitive tariff. CEA tandem providers also aggregate traffic for a number of rural LECs and charge an averaged rate. Similar to the Commission's prohibition on rate-of-return LECs engaged in access stimulation from participating in the NECA tariff, the Commission should prohibit LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider.

This solution also is in line with the purpose of CEA providers. SDN was authorized by the Commission and South Dakota Public Utilities Commission to bring the benefits of equal access and competition to rural areas served by the independent incumbent local exchange carriers (ILECs) in South Dakota, where interexchange carriers (IXCs) were unwilling to make their competitive long distance services available and interconnect with rural ILECs that served few customers with relatively low traffic volumes. SDN was authorized to overcome this problem by aggregating the rural traffic, centralizing the equal access function, and providing interconnection equal in type and quality to all IXCs. The CEA network still provides efficient and cost effective equal access to the rural communities served by the ILEC members of SDN, where traffic volumes continue to be very low.

However, there is one CLEC engaged in access stimulation subtending SDN's tandem that has a high volume of terminating traffic and in this case, the provisions of SDN's 214 authority have been used to allow access arbitrage. The Commission should directly address this situation by prohibiting LECs engaged in access stimulation from utilizing a CEA tandem. This

simple rule would immediately address one identified form of access arbitrage, without otherwise impacting CEA service or imposing cost on SDN and the rural LECs subtending SDN's tandem that are not engaged in access stimulation.

The Commission should reject AT&T's request that the Commission eliminate the designation of CEA service provider as part of its access stimulation arbitrage reform. AT&T's proposal would harm rural ILECs in South Dakota and their customers and is not necessary to address the access stimulation issue. Further, AT&T's arguments regarding SDN's CEA service simply are wrong. AT&T argues that "there is no longer any need for a distinct CEA service" and the Commission should not be concerned with any adverse impact on CEA service in connection with the proposed access arbitrage rules.<sup>2</sup> In support of this position, AT&T states that the Commission has "eliminated equal access obligations except for certain grandfathered services, and there is no evidence that any LECs today... need to rely on CEA providers in order to offer their customers '1+' dialing to long distance carriers."<sup>3</sup> AT&T also argues that "the mandatory use policies were put in place as conditions on Section 214 authority, and the Commission has already eliminated those requirements."<sup>4</sup> Further, AT&T argues that "CEA service providers have become a primary enabler of the current access stimulation arbitrage schemes;"<sup>5</sup> and that the Commission has determined that "the CEA service providers' primary business plan is handling access stimulation arbitrage."<sup>6</sup>

AT&T's statements are not true. AT&T should know that in South Dakota there are many existing customers who have selected AT&T and other IXC's not affiliated with the rural

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<sup>2</sup> Comments of AT&T, WC Docket No. 18-155, filed July 20, 2018 at 16. (AT&T Comments)

<sup>3</sup> AT&T Comments at 16, n.43.

<sup>4</sup> *Id.*

<sup>5</sup> AT&T Comments at 16.

<sup>6</sup> AT&T Comments at 17.

ILECs or SDN as their long distance carrier. In fact, approximately 75% of SDN's originating access minutes are associated with customers who have selected one of the large nationwide IXC's as their long distance carrier. Pursuant to the Commission's order granting 214 authority to SDN, the ILEC members of SDN were not required to implement equal access functionality in each end office switch. Rather, the Commission designated SDN as the provider of equal access functionality and these functionalities were installed once in the CEA switch. This remains true today. SDN also provides centralized technical expertise, simplified Carrier Access Records Exchange and Access Service Request processing; efficient traffic management and simplified service provisioning for IXC's, which minimizes costs for all companies that want to compete in rural areas. Contrary to AT&T's apparent position, the Commission has not eliminated SDN's section 214 authority and the requirements therein. Thus, the South Dakota ILEC's subtending SDN's CEA tandem and IXC's need to rely on SDN in order to provide 1+ dialing to long distance carriers, including AT&T and, therefore, there is still a need for a distinct CEA service in South Dakota.

In addition, contrary to AT&T's comments, and as AT&T well knows, SDN is not an "enabler" of access stimulation arbitrage schemes and the Commission has not determined that SDN's primary business plan is handling access stimulation arbitrage. On the contrary, over the years SDN has urged the Commission to adopt a number of measures to eliminate the ability of carriers engaged in access arbitrage to hide behind the SDN CEA tandem and SDN has spent considerable time and money trying to work with AT&T to resolve its issues with stimulated traffic.

In any event, the Commission can address AT&T's concerns and avoid harming the viability of CEA by adopting SDN's proposal and prohibiting LECs engaged in access stimulation from utilizing a CEA tandem. SDN urges the Commission to do so.

AT&T also asks the Commission to apply the *Aureon Liability Order*<sup>7</sup> to all CEA providers and find that CEA service providers are CLECs for purposes of the *Transformation Order's* intercarrier compensation rules and subject to rate cap and rate parity rules that apply to CLECs. The Commission should reject this request. The *Aureon Liability Order* was the result of an enforcement proceeding and SDN did not have the opportunity to make its legal and factual arguments on this question. Accordingly, AT&T's request is premature and should be rejected.

The Commission also should not adopt the proposal of CenturyLink to require non-access stimulating LECs that route traffic to CEA providers to accept direct connections.<sup>8</sup> When SDN was granted CEA authority, the Commission and state commission required IXC's to route traffic to the SDN member ILECs through the SDN tandem as a means of ensuring the viability of SDN's centralized equal access service. As stated, the traffic volumes for these ILECs are very low and SDN's CEA viability is dependent on traffic aggregation. CenturyLink's proposal would undermine SDN's CEA network and would be at cross purposes with the Commission's policy objectives in authorizing them. Accordingly, CenturyLink's proposal should not be extended to CEA providers.

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<sup>7</sup> *In re: AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, Proceeding No. 17-56, FCC No. 17-148, released November 8, 2017.

<sup>8</sup> *NPRM* at ¶23.

## **II. Access Stimulation Arbitrage is an Unjust and Unreasonable Practice and Should be Prohibited**

The comments show that the Commission's proposals to address access stimulation arbitrage schemes will not be effective and/or will impose costs and burdens on carriers not engaged in access stimulation. SDN does not support the proposal to require SDN, as an intermediate access provider, to bill access-stimulating LECs for terminating access and to not bill IXC. This proposal would only entangle SDN with access stimulators and increase SDN's cost at a time when SDN's revenues are decreasing and it appears SDN would not be able to recover any additional cost under current Commission rules. SDN's costs would increase because it would have to bill additional carriers for its services. Since LECs do not currently subscribe to SDN's access services, it is not clear whether or how SDN would be required to amend its tariff to bill LECs for access services. If SDN's tariff does not apply, then SDN would lose "deemed lawful" status for these charges. This proposal also would subject SDN to billing disputes from access stimulators and it may also subject SDN to disputes between access stimulators and IXCs, if there is an issue as to whether or not certain traffic is stimulated traffic.

Similarly, IXCs oppose the proposal to require carriers engaged in access stimulation to accept direct connections from IXCs because, they argue, it is burdensome to build direct connections into some rural areas and once a direct connection is established, the access stimulator will simply move to a new location. Thus, with respect to both of the Commission's proposals, carriers not engaged in access stimulation argue they should not be forced to incur cost to "fix" the problem of access stimulation.

Further, the proposed rules will not address what is, apparently, the latest issue in connection with the access stimulation arbitrage scheme of offering a "free" service to

consumers, namely, the intentional blocking of calls. As SDN explained in its comments, for approximately the past year, SDN has experienced a tremendous number of terminating calls, sometimes thousands per day, that, from SDN's perspective, are being rejected by a CLEC engaged in access stimulation in connection with a “free” conference calling customer and the CLEC has advised SDN that it is the free conference calling customer that is blocking the calls. This unusual call blocking not only wastes SDN's communications resources, but also has required SDN to expend many hours trying to understand and “fix” the problem, all without compensation.

Inteliquent apparently argues that the blocking of calls in this manner happens when an intermediate service provider and a free calling platform are affiliated and the blocking of calls is used to force the routing of calls through the intermediate carrier and away from the CEA provider.<sup>9</sup> It is clear that “free” service access stimulation schemes can be very lucrative, which creates a powerful incentive to distort communications network facilities and the Commission's rules to keep the money flowing. It is equally clear that this type of blocking is not in the public interest.

In its comments, HD Tandem states that it is an intermediate carrier whose business plan is centered on the aggregation of traffic destined to high volume applications, such as free conference call service. It further appears that HD Tandem asks the Commission essentially to enforce its business model by asking the Commission to “require providers to enter into negotiations under an FCC designed framework to facilitate direct connection or their functional equivalents between access stimulators and carriers...”<sup>10</sup> It is not clear that HD Tandem's request is in the public interest or in the interest of promoting broadband deployment. HD Tandem

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<sup>9</sup> Comments of Inteliquent, WC Docket No. 18-155, filed July 20 at 3-4.

<sup>10</sup> Comments of HD Tandem, WC Docket No. 18-155, filed July 20, 2018 at 3.

argues that its business model has provided revenues for 14 rural LECs to deploy broadband to free calling service customers.<sup>11</sup> Even if this is true, it must be balanced against the financial harm to all other carriers caused by access stimulation, which adversely impacts their ability to deploy broadband. Accordingly, it is time to recognize that access stimulation arbitrage is an unjust and unreasonable practice and it should be prohibited.

Finally, SDN disputes Comtech's allegation that SDN and the rural LECs in South Dakota that subtend SDN's switch are engaged in a form of access arbitrage in connection with the implementation of a statewide 9-1-1/NG9-1-1 service. Comtech's claim is false and is merely a misguided and strained attempt to categorize an issue arising under a state contract addressing NG9-1-1 service as access arbitrage. SDN disputes the alleged facts presented by Comtech in its exaggerated effort to fit transport of 9-1-1 and NG9-1-1 traffic in South Dakota into the current rule making proceeding. In fact, Comtech states that the traffic at issue is transit traffic and asks the Commission to resolve in the instant proceeding the question of transport responsibility for transit traffic destined to an Emergency Services IP network. Comtech also neglects to mention in its comments that Comtech and the rural LECs in South Dakota have been engaged in two proceedings before the South Dakota Public Utilities Commission, which has issued a Declaratory Ruling on this matter. It is too far of a stretch to fit those allegations into the current proceeding. For these reasons, it is clear that Comtech's claim does not involve access arbitrage and is not properly part of this proceeding.

### **III. Conclusion**

As shown herein, the Commission should prohibit any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider. In addition, the Commission

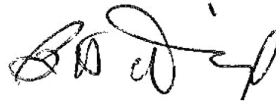
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<sup>11</sup> Comments of HD Tandem at 5 and 8.



should find that access stimulation arbitrage is an unjust and unreasonable practice and, as such, is prohibited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Dickens, Jr.", with a stylized flourish at the end.

Benjamin H. Dickens, Jr.

Mary J. Sisak

Counsel to South Dakota Network, LLC

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